IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	)	Examiner: Kemmerer, Elizabeth
David BOTSTEIN, *et al.*	)	Art Unit: 1646
Application Serial No. 09/993,687	)	Confirmation No: 4943
Filed: November 14, 2001	)	Attorney's Docket No. GNE-2730 P1C11
For: **SECRETED AND TRANSMEMBRANE POLYPEPTIDES AND NUCLEIC ACIDS ENCODING THE SAME**	)	**Customer No.77845**

Filed via EFS MAY 30,2008

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

On September 19, 2007, the Examiner made a final rejection to pending Claims 119-126 and 129-131. A Notice of Appeal was filed on December 19, 2007 and an Appeal Brief was subsequently filed on March 19, 2008.

A Notification of Non-Compliant Appeal Brief was mailed March 31, 2008, which stated that the Appeal Brief did not fit with the criteria of 37 C.F.R. §41.37(c)(1)(v)). Specifically, the notification asserted that, in Section V, the brief "does not refer to claims (119, 124) on appeal explicitly to the specification by page and line numbers and to the drawings if any." The following amended Appeal Brief has been corrected to more clearly reference the claims and identify line numbers where appropriate in the Summary of Claimed Subject Matter (Section 5), as requested by the PTO.

To reduce expense and duplication, Appellants hereby resubmit only Section V of the Appeal Brief. The Board is requested to refer to the Appeal Brief submitted in its entirety dated March 19, 2008.

This response to Non-Compliant Brief is timely filed, with a request for a one month extension of time and the necessary fees.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention claimed in the present application is related to an isolated polypeptide comprising the amino acid sequence of the polypeptide of SEQ ID NO:194, referred to in the present application as "PRO1009." The PRO1009 gene was shown for the first time in the present application to be significantly amplified in human colon cancers as compared to normal, non-cancerous human tissue controls (Example 170). The invention claimed in the present application is related to an isolated polypeptide comprising the amino acid sequence of the polypeptide of SEQ ID NO:194 (Claims 124(a) and 125); the amino acid sequence of the polypeptide of SEQ ID NO:194, lacking its associated signal peptide (Claims 124(b) and 126); or the amino acid sequence of the polypeptide encoded by the full-length coding sequence of the cDNA deposited under ATCC accession number 209977 (Claims 124(c) and 129). The invention is further directed to polypeptides having at least 80% (Claim 119), 85% (Claim 120), 90% (Claim 121), 95% (Claim 122) or 99% (Claim 123) amino acid sequence identity to the amino acid sequence of the polypeptide of SEQ ID NO:194; the amino acid sequence of the polypeptide of SEQ ID NO:194, lacking its associated signal peptide; or the amino acid sequence of the polypeptide encoded by the full-length coding sequence of the cDNA deposited under ATCC accession number 209977, wherein the nucleic acid encoding said polypeptide is amplified in colon tumor. The invention is further directed to a chimeric polypeptide comprising one of the above polypeptides fused to a heterologous polypeptide (Claim 130), and to a chimeric polypeptide wherein the heterologous polypeptide is an epitope tag or an Fc region of an immunoglobulin (Claim 131).

The amino acid sequence of the native "PRO1009" polypeptide and the nucleic acid sequence encoding this polypeptide (referred to in the present application as "DNA57129-1413") are shown in the present specification as SEQ ID NOs: 194 and 193, respectively, and in Figures 121 and 122, described on pages 293, lines 23-26. The full-length PRO1009 polypeptide having the amino acid sequence of SEQ ID NO:194 is described in the specification at, for example, on page 15 and pages 116-118 and the isolation of cDNA clones encoding PRO1009 of SEQ ID NO:194 is described in Example 51, page 444-445 of the specification. PRO polypeptide variants having at least about 80-99% amino acid sequence identity with a full

length PRO polypeptide sequence, or a PRO polypeptide sequence lacking the signal peptide are generally described in the specification at, for example, page 305, line 23 onwards, and percent amino acid sequence identity determination is generally described at least at, for example, pages 306-308, line 14 onwards. The preparation of chimeric PRO polypeptides (Claims 130 and 131), including those wherein the heterologous polypeptide is an epitope tag or an Fc region of an immunoglobulin, is set forth in the specification at page 374, lines 24 to page 375, line 9. Examples 140-143 and page 376, line 12 onwards describe the expression of PRO polypeptides in various host cells, including *E. coli*, mammalian cells, yeast and Baculovirus-infected insect cells.

Finally, Example 170, in the specification at page 539, line 19, to page 555, line 5, sets forth a 'Gene Amplification assay' which shows that the PRO1009 gene is amplified in the genome of certain human colon cancers (see Table 9B, page 552-553). The profiles of various primary colon tumors used for screening the PRO polypeptide compounds of the invention in the gene amplification assay are summarized on Table 8, page 546 of the specification.

CONCLUSION

For the reasons given above, Appellants submit that the Appeal Brief submitted with regards to the instant application meets the requirements of 37 C.F.R. §41.37(e)(1)(v)).

Accordingly, Appellants hereby request eonsideration by the Board of Patent Appeals and Interferenees.

Please eharge any additional fees, ineluding fees for additional extension of time, or eredit overpayment to Deposit Account No. **07-1700** (referencing Attorney's Doeket No. **GNE-2730P1C11**).

Respeetfully submitted,

Date: May 30, 2008

By: _____
Christopher De Vry (Reg. No. 61,425)

GOODWIN PROCTER LLP
135 Commonwealth Drive
Menlo Park, CA 94025-1105
Telephone: (650) 752-3100
Facsimile: (650) 853-1038

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